

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANHSON N.,

Claimant,

v.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. N 2006070419

DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 22, 2006.

Claimant Anhson N. was represented by his mother, Linh D. Claimant was not present.

Pamela Higgins, Fair Hearing Specialist, represented the service agency, Regional Center of the East Bay (RCEB).

The matter was submitted on August 22, 2006.

ISSUE

Whether RCEB shall reimburse claimant's mother for the \$250 cost of attending the Going to the Heart of Autism workshop held on June 9 and 10, 2006.

FACTUAL FINDINGS

1. Claimant Anhson N. was born on March 9, 2001, and is five years old. He has been diagnosed with autism. He is eligible for and receives services from the RCEB.

2. Claimant lives at home with his parents and a younger sister. Claimant's father, Hao N., works full-time as a mechanical engineer. Claimant's mother, Linh D., is a pediatrician who works part-time in San Jose.

3. Claimant's mother is his primary teacher and caregiver. She is a pediatrician who received her M.D. at the University of California, Los Angeles. She has worked at Bay Area hospitals, including Children's Hospital, Oakland, and the Stanford University Medical Center. She is currently a pediatrician for Santa Clara County. She has hands-on experience with autism as a parent and as a pediatrician. Families bring their autistic children to her for pediatric services because they know she has her own autistic child. As a pediatrician and as a parent of a child with autism, claimant's mother has sought and continues to seek to keep abreast of developments regarding autism.

4. Claimant's Individual Program Plan (IPP) goals are that he will live with his parents, live a normal life, maintain optimal health, and be fully included in school.

5. Claimant's mother describes him as "rigid and inflexible." His March 16, 2006 RCEB Annual Review notes:

Social: Anhson does not initiate interaction but does like to be around other children and does parallel play. He interacts with others such as family or adults when they initiate. Mom reported that she tries to set up play dates every Friday. He socializes with verbal cues. He likes trains, swimming, gymnastics, puzzles, and anything with letters and numbers. He plays with his sister and mother referees because he pulls toys away from sister.

Emotional: At social gatherings, parents continue to supervise [sic] Anhson because he might become upset if things are not the way he feels they should be. If he cannot find something or if he feels something is out of place, he will yell and scream. Anhson separates shoes, puts a rock in the living room plant, and if there is a set of something that other children are playing with, he takes one away which upsets them. Anhson needs to hold on to something in his hand constantly. He will not let it go even if asked. Parents reported that if Ailinh, his little sister, screams in the morning it throws him off for a good portion of the day. STE Consultants have been providing behavioral services to family and family reported that it is benefiting them.

6. An IPP review meeting for claimant was held in March 2006. Thereafter, a March 16, 2006, addendum to claimant's IPP set forth the following plan:

- Anhson's parents will provide him with all his basic needs through 3/2009
- Planning team has assessed the need for respite through the voucher system at 29 hours per month effective 5/01/06 to 4/30/07
- Parent will monitor and supervise respite provider, will be responsible for payroll and IRS reporting and will submit reimbursement requests to RCEB in a timely manner through 3/2008
- RCEB Case Manager will maintain annual contacts through 3/2008 to review IPP objectives and provide assistance, school advocacy, information and referrals and service coordination as per client need and RCEB policies and procedures

At the IPP review meeting, claimant's mother requested that RCEB reimburse her for two upcoming conferences. Thus, the March 16, 2006 IPP addendum stated that claimant's case manager, Carmelita Rambajan, "WILL FIND OUT ABOUT REIMBURSEMENT TO PARENTS FOR SPECIALIZED CONFERENCES AND O.T. AND SPEECH." (Capitalization in original.) "O.T." means occupational therapy.

7. Claimant's mother sought reimbursement for the cost of attending the Best Practices in Autism Treatment and Methodologies Education Conference, to be held April 27 through 30, 2006, in San Jose, and the Going to the Heart of Autism workshop, to be held June 9 and 10, 2006, in San Rafael.

8. In email messages sent to Carmelita Rambajan in April 2006, claimant's mother requested that RCEB reimburse her for the cost of attending the April 2006 conference, inquired what information she needed to provide to RCEB, and stated that conference attendance "should be under the service of 'parent training' that RCEB is supposed to provide for its clients."

9. On April 17, 2006, Carmelita Rambajan submitted a "request for exceptional level of service" to the RCEB "exceptions committee" for claimant's mother to attend the April 2006 conference. Rambajan's request noted that claimant's mother believed that the conference would address questions on pivotal response training, social skills, inclusion specialists, advocacy, and new techniques for children with autism. Rambajan stated, "There will be other topics covered as well that will help Anhson's parents become better parents of an autistic child by helping them learn what are the 'Best Practices for Autism.'" Rambajan further stated, "They also would like to register for another conference in June."

10. The exceptions committee deferred action on the service request pending the submission of additional information.

11. In an April 24, 2006 email message to claimant's mother, Rambajan stated:

I submitted the request for this conference and mentioned that you wanted reimbursement for the June conference as well. The response back from the exceptions committee was that they would fund for [sic] one or the other conference.

We can reimburse you for the "Best Practices" conference since I already have all the paperwork ready to go or . . . if you want to be reimbursed for "Going to the Heart of Autism" in June, then I need to find out the reasons why you would like to attend this conference and submit new paperwork to the exceptions committee.

Let me know what you would like to do.

(The ellipsis in the second paragraph appeared in the original email.)

12. In an April 24, 2006 email message to Rambajan, claimant's mother asked:

Is there a limit to the amount of parent training that RCEB will fund? It just seems odd to me. Wouldn't it be in the best interest for Anhson in the long run to have parents who are better "trained" to attend to his needs? Wouldn't Anhson have a better chance at being an independent adult if we are more knowledgeable in teaching him?

Claimant's mother went on to ask Rambajan to send her the paperwork to file for reimbursement for the June conference.

Rambajan's reply did not answer claimant's mother's questions. Instead, she tried to persuade claimant's mother to select the April conference instead of the June conference, stating, "I need to resubmit the paperwork to the exceptions committee stating that you would prefer to be reimbursed for the conference in April and not the one in June."

In reply, claimant's mother reiterated, "Actually, we would like RCEB to cover the expense of both conferences." Thereafter, Rambajan replied that the exceptions committee wanted claimant's mother to make a choice between the conferences and to make an appointment for RCEB's autism clinic.

Claimant's mother asked Rambajan to submit a reimbursement request for the April conference and agreed to schedule an appointment for the autism clinic. She did not abandon her request for reimbursement for the June conference.

13. Rambajan resubmitted the service request to the exceptions committee. The request sought reimbursement of \$210 for claimant's mother to attend the April conference and again noted that claimant's parents also wanted to register "for another conference in June."

Rambajan also stated, "Parents decided to be reimbursed for the April conference instead of the June conference and they also agreed to schedule a time for the Autism Clinic." This statement was not accurate; claimant's mother still wanted reimbursement for the June conference.

14. Claimant's mother attended the April 2006 Best Practices in Autism conference. The conference included a workshop on the Tomatis Method of "sound based therapy" for speech and language problems in children and a workshop on "social thinking" concepts and strategies. The conference included discussion of treatments that have not been peer reviewed. RCEB paid Linh D.'s \$210 cost of attendance. This was a cost-effective use of public resources. Claimant's mother's attendance at the April conference was consistent with claimant's IPP goals.

15. In early June 2006, claimant's mother again sought reimbursement for the June conference.

16. Claimant's mother attended the Going to the Heart of Autism workshop on June 9 and 10, 2006, at a cost of \$250. The workshop was held at Dominican University of California, San Rafael. Topics at the conference included: "Research & the Core Deficits of Autism"; "Principles of the RDI® Program"; and, "'How-To' Strategies & Activities." Steven Gutstein, Ph.D., one of the developers of Relationship Development Intervention (RDI), was a principal speaker. Claimant's mother had discussions with Dr. Gutstein and members of his clinical staff during the conference. Claimant's mother's attendance at the June conference was consistent with claimant's IPP goals.

17. RCEB had previously informed Linh D. she had the option to attend the June 2006 conference. In a June 12, 2006 letter, however, Carmelita Rambajan informed claimant's parents of RCEB's denial of the request for reimbursement for the June conference:

RCEB is unable to meet your request. The attached *Notice of Proposed Action* identifies the rationale and the authority for the decision. We believe that RDI is an experimental therapy with no research to support it and we are obligated by the Lanterman Act to take into account the effectiveness of these options. Specifically, section 4512 (b) of the Lanterman Act states, "The determination [of services and supports] shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by

individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.”

(The italics and brackets appeared in original letter.)

The attached Notice of Proposed Action denied the reimbursement request and stated, “Reason for action: RDI is an experimental therapy with no research to support its effectiveness.” It cited as authority for the denial Welfare and Institutions Code sections 4512, subdivision (b), 4646, subdivisions (a), (b), and (d), and California Code of Regulations, title 17, section 50612, subdivision (b).

Rambajan notified claimant’s mother that she had the right to due process and to appeal the RCEB’s decision.

18. Claimant and his mother attended the RCEB’s autism clinic on June 26, 2006.

19. On July 4, 2006, claimant’s mother signed a fair hearing request appealing RCEB’s denial of funding for the June conference. She also requested an informal meeting with the service agency’s director or designee in an effort to resolve the matter prior to a fair hearing.

20. The informal meeting was held August 3, 2006. An August 7, 2006 letter from Bernadette Lufrano, Case Management Supervisor, denied reimbursement for the June conference:

Based on the fact that RDI is an experimental therapy with no research no support it, and RCEB does not provide RDI services to its consumers, I am denying your request for reimbursement. I recommend that you utilize the IEP process in order to advocate with you [sic] school district for a program which would more adequately address Anhson’s social and communication needs. Your case manager is available to assist you with advocacy and provide you with referrals for additional advocacy as needed.

21. RCEB’s vision statement states, “Families are respected and supported and are in control of their lives with respect to parenting their child with special needs. They are seen as capable, competent decision-makers and as major sources of support for their children.” RCEB’s mission is to support “persons with developmental disabilities and their families with the tools needed to achieve lives of quality and satisfaction, and builds partnerships that result in inclusive communities.” Complainant’s mother’s attendance at the April and June conferences was consistent with RCEB’s vision and mission statements.

22. RCEB behavior analyst Weihe Huang, Ph.D., noted that parental involvement is the most important predictor of an autistic child's development. RCEB provides and funds parental training. RCEB encourages and funds conference attendance so that parents will become better informed and trained. Requests for conference attendance are considered by the RCEB exceptions committee. Complainant's mother's attendance at the April and June conferences was consistent with RCEB's encouragement of parental training.

23. RCEB does not have a limit on the cost of conferences or the number of times a consumer's parents may attend conferences. RCEB typically does not fund back-to-back conferences, however.

24. RCEB exhibit 18 is an Autism Society of America publication, "NEXT STEPS: A GUIDE FOR FAMILIES NEW TO AUTISM." The publication provides "a general understanding of Autism Spectrum Disorder, an overview of the various treatment options, and brief information about education and services that are helpful to children and adults with autism." The publication counsels, "No two individuals with ASD are alike; therefore, treatment outcomes will vary. **Remember to research each therapy approach carefully.**" (Emphasis added.)

Claimant's mother's attendance at the Going to the Heart of Autism workshop enabled her to research the RDI therapy approach.

25. RCEB exhibit 19 was information from the Association for Science in Autism Treatment website (www.asatonline.org). With regard to Relationship Development Intervention, the Association for Science in Autism Treatment states:

Description: Relationship Development Intervention is a treatment program proposed for autistic spectrum disorders. It was developed and trademarked by the husband/wife team of Steven Gutstein, Ph.D. and Rachelle K. Sheehy, Ph.D., clinical psychologists. The focus of RDI is to teach parents and others how to motivate and enable those with autism to experience dynamic social relationships through "social and emotional development activities" such as passing a "hot potato" rapidly back and forth or duplicating facial expressions shown in pictures.

Research Summary: Preliminary data that may support this intervention appear on the developers' website, but the intervention has not been evaluated in peer-reviewed studies with strong experimental designs. Recommendations: Researchers may wish to conduct studies with strong scientific designs to evaluate Relationship Development Intervention. Professionals should present this intervention as untested and

encourage families who are considering this intervention to evaluate it carefully. [Emphasis added.]

Claimant's mother's attendance at the Going to the Heart of Autism workshop enabled her to learn about and evaluate RDI.

26. Dr. Huang familiarized himself with RDI through conference attendance and by reading Dr. Gutstein's book. Huang has discussed RDI with colleagues. Huang feels that RDI has useful components such as its emphasis on parental involvement and dynamic training and thinking. Huang also has reservations about some of its approaches; for example, Huang feels that RDI does not place enough emphasis on language development. He also feels that thus far there has been insufficient peer-reviewed research to demonstrate RDI's effectiveness.

Huang acknowledged, however, that RCEB does fund occupational training and music therapy, for which peer-reviewed research and evidence of effectiveness are also limited.

27. Carmelita Rambajan's current supervisor is case management supervisor Elvia Orsorio-Rodriguez. Orsorio-Rodriguez was on parental leave until June 2006, and was not involved in RCEB's consideration and denial of Linh D.'s request for reimbursement for the April and June 2006 conferences. Orsorio-Rodriguez asserted that RCEB does not fund any services that are not research-based. She acknowledged, however, that RCEB funds consumers' attendance at a summer camp that includes a significant RDI component; that funding provides respite for consumers' parents. Claimant attended this summer camp.

28. As a physician Linh D. is well-acquainted with the scientific method and the need for peer-reviewed research. She is well-acquainted with the funding limitations of public institutions. She acknowledges that RDI is an experimental therapy. She emphasizes that she did not ask RCEB to fund RDI therapy for claimant. Instead, she sought reimbursement for attendance at a conference through which she became a better informed parent of a child with autism.

LEGAL CONCLUSIONS

1. Claimant's mother's attendance at the April and June conferences enabled her to become a more informed, better trained parent. This was consistent with claimant's individual program plan goals and RCEB's encouragement and support of parental training. The benefits of claimant's mother's attendance at the conferences were not refuted by the service agency. Indeed, RCEB's witnesses, vision and mission statement, and exhibits noted the importance of parental involvement, education and training.

2. RCEB cited certain statutory and regulatory provisions as the authority for its denial of the reimbursement request. Welfare and Institutions Code section 4512, subdivision (b), recognizes the needs and preferences of the consumer's family in the

determination of services and supports received by the consumer; it specifically includes training for parents. Section 4646, subdivisions (a), (b), and (d), further mandate consideration of, inter alia, the consumer's family's preferences and needs and the cost-effective use of public resources in the formulation of individual program plans. Claimant's mother's attendance at the April and June conferences was not inconsistent with sections 4512, subdivision (b), and 4646, subdivisions (a), (b), and (d). Nor was it inconsistent with California Code of Regulations, title 17, section 50612, subdivision (b), which pertains to the authorization process for the purchase of services. RCEB cited no other legal authority for its denial of reimbursement.

3. RCEB's reimbursement of Linh D.'s \$210 expense of attending the April conference was a cost-effective use of public resources that enabled her to be a better trained parent of a child with autism. RCEB's reimbursement of Linh D.'s \$250 expense of attending the June conference will likewise be a cost-effective use of public resources. RCEB will be ordered to reimburse Linh D. for the cost of the June conference, in the amount of \$250.

4. Claimant's mother did not request that RCEB provide RDI therapy to claimant, but RCEB's denial of reimbursement appeared to assume that such a request had been made. This decision makes no finding as to the effectiveness of RDI therapy.

ORDER

1. The Regional Center of the East Bay shall reimburse claimant's mother, Linh D., \$250 as reimbursement for her attendance at the Going to the Heart of Autism workshop, held June 9 and 10, 2006.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)